

ARTICLE 9

SECTION 7

CONVERSIONS AND TRANSFERS

1. GENERAL

This section explains procedures for evaluating the effect the applicant's/beneficiary's conversion or transfer of property has on Medi-Cal eligibility.

2. CONVERSION

A conversion of property means to change property from one form to another without changing ownership.

A. Effect on Eligibility

The conversion of property may effect Medi-Cal eligibility. Although the conversion in itself has no effect on eligibility, the property obtained through the conversion may have affected eligibility and must be evaluated.

EXAMPLE: A life insurance policy was exempt but has been cashed in for \$500. When the \$500 is added to the beneficiary's property reserve, the reserves exceed the limit, and make the beneficiary ineligible.

B. Common Situations of Property Conversions

The following are common situations in converting property:

1) Sale of Property

If an applicant/beneficiary sells an item of real or personal property, the proceeds from the sale will be considered property rather than income.

2) Life Insurance

If an applicant/beneficiary borrows against a life insurance policy, the money received is considered property rather than income.

3) Insurance Payments

Insurance or other third-party payments for the loss or damage of property are treated as converted property rather than income.

4) Property Used to Purchase a Principal Residence

The proceeds from the sale of real property, that are retained by the applicant/beneficiary who does not own a principal residence or who wishes to sell his/her current principal residence to purchase a new principal residence, are exempt with the following conditions:

- a) The applicant/beneficiary must intend to use the proceeds to purchase a principal residence;
- b) The proceeds may also be used to pay for moving costs, necessary furnishings and repairs or alterations to the principal residence purchased, and
- c) The proceeds are exempt for a period not to exceed six months from the date of receipt.

NOTE: If a part of the proceeds is used for some other purpose, the remainder is still exempt as long as the remainder is being retained to apply to the purchase of a principal residence.

3. TRANSFERS OF PROPERTY

A transfer of property means a change of ownership so that a person no longer holds title to, or beneficial interest in, the property. This applies to any type of property.

Prior to January 1, 1990, transfers of property had to be evaluated for adequate consideration. If property was transferred for less than fair market value, the worker was required to calculate a period of ineligibility.

Effective January 1, 1990, there is NO PENALTY for transferring property for less than fair market value, except for transfers made by institutionalized individuals. (See item 4.)

Appendix A contains the rules for property transferred prior to January 1, 1990, by a person who was a Medi-Cal beneficiary prior to January 1, 1990, and such transfer is discovered by the County through fraud detection methods.

4. TRANSFER OF PROPERTY BY AN INSTITUTIONALIZED INDIVIDUAL ON OR AFTER JANUARY 1, 1990

Transfer(s) of non-exempt property for less than fair market value by an institutionalized individual will be considered in determining a Period of Ineligibility for Medi-Cal unless the transfer(s) were made more than 30 months preceding the date of application for Medi-Cal or the date of institutionalization (if the individual was already a Medi-Cal beneficiary).

- A. Transfers of non-exempt property by institutionalized persons for less than fair market value will result in a period of ineligibility for nursing facility services only. He/she will still

be eligible for all other services. (The state will determine the difference between nursing facility level of care and other services.)

Transfers of property made without adequate consideration, but the applicant/beneficiary provides convincing evidence to overcome the presumption that the transfer was for the purpose of establishing eligibility or lower share of cost, will **not** result in a period of ineligibility.

- B. For calculation of the period of ineligibility for transfers of non-exempt property, which occurred on or after January 1, 1990, complete Form MC 176 PI. See Item 5 for procedures on processing a case for which a period of ineligibility has been determined.

1) The period of ineligibility begins with the month in which the property was transferred.

2) The number of months in the period shall be the lesser of:

a) 30 months, or

b) The uncompensated value divided by the average private pay rate (APPR). The average private pay rate is an amount that is determined by the state. This amount is comparable to the average monthly cost of long-term care.

Use the average private pay rate for whichever is most recent; year of institutionalization or year of application. Current and several prior year APPRs are found in Appendix II-1-B.

- C. Transfers of property occurring on or after January 1, 1990, which DO NOT result in a period of ineligibility are:

1) Property transferred was a non-exempt former principal residence and its title was transferred to:

a) The spouse or community spouse.

b) A child under 21.

c) A child who is blind, permanently and totally disabled.

d) A sibling who has equity interest in the home and who was residing in the institutionalized individual's home for a period of at least one year immediately before the date the person became institutionalized.

e) A son or daughter who resided in the home for a period of at least two years immediately before the date the person became an institutionalized individual, and who provided care to the person so that the individual could stay at home instead of being in an institution.

- 2) Non-exempt property that was transferred to:
 - a) The community spouse, or
 - b) A child of the institutionalized individual who is blind, and is permanently and totally disabled, or
 - c) The spouse (before admission of the institutionalized spouse to long-term care).
- 3) Property transferred and a satisfactory showing is made that:
 - a) The institutionalized individual intended to transfer the property at fair market value, or
 - b) The resources were transferred for reasons other than to qualify for Medi-Cal.
- 4) No period of ineligibility results if denial would work an undue hardship. Undue hardship exists when:
 - a) Except for this transfer, the person would be otherwise eligible and the person is unable to obtain medical care without Medi-Cal, and one of the following conditions exist:
 - (1) The person was incompetent at the time of the transfer, or
 - (2) The person was competent but unduly influenced, or
 - b) All of the following conditions exist:
 - (1) The person is being threatened with eviction from the long-term care facility,
 - (2) Eviction would increase medical problems or decrease physical health, and
 - (3) A satisfactory showing is made to the County department that the transferee no longer has the property and does not have the funds to pay for institutional care (both past due and future bills).
 - c) The beneficiary is receiving a Hospice Care Medi-Cal Card. (Code 900 in the restricted services field on MEDS.)
- 5) No period of ineligibility results from the transfer of the Community Spouse Resource Allowance (CSRA).

5. TRANSFER OF PROPERTY BY A LONG-TERM CARE PERSON ON OR AFTER JANUARY 1, 1997

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Under Section 1128B of the Social Security Act, an individual may be fined up to \$25,000 and/or imprisoned for up to five years upon conviction of a Medicaid program related felony.

Effective January 1, 1997, the Kennedy-Kassenbaum "Health Insurance Portability and Accountability Act of 1996" adds a new crime to the prohibited activities listed in Section 1128B, for cases where an individual knowingly and willfully makes a disqualifying transfer of assets on or after January 1, 1997, in order to become eligible for Medicaid, which results in the imposition of a period of ineligibility for nursing facility level of care.

Institutionalized individuals who make disqualifying transfers of property on or after January 1, 1997, and who will receive only restricted services due to a period of ineligibility for nursing facility level of care being imposed (see Item 4 above), could also be subject to criminal penalties. In addition, any person who has assisted that individual in making the disqualifying transfers (i.e., recipients of the transferred assets, health care providers, insurance companies, attorneys, etc.) could also be subject to criminal penalties.

Normally, a crime is committed once a person performs the criminal act. Under this law, the act of disposing of an asset is not a crime until a regulatory agency decides to impose a penalty. Therefore, ETs will continue to use the existing transfer of property rules in Item 4 above, which are not changed by this legislation, to determine whether the transfer is for less than adequate consideration (fair market value) and whether or not a period of ineligibility for nursing facility level of care will be imposed. For example, ETs must only consider those transfers made within the 30-month look-back period, and transfers made to establish eligibility, etc.

The federal government will decide whether or not to press charges and to prosecute individuals who transfer property without adequate consideration in order to qualify for Medi-Cal. Thus, in order to ensure that only absolutely accurate cases are referred to the federal authority, ETs must gather all the necessary information as usual, and:

- A. Determine whether or not the transfer was made on or after January 1, 1997, (follow procedures in Item 4 above for transfers made before January 1, 1997); and
- B. Determine whether or not it is a disqualifying transfer; and
- C. If the answer to A and B is YES, complete the MC 176 PI; and
- D. If the completion of the MC 176 PI results in any month of ineligibility for nursing level of care, send all the pertinent case documentation (including, but not limited to, the MC 210 or other statement of facts, MC 219, MC 176 PI, DHS 7068 and/or Authorized Representative form, documentation of the property transferred and its value and date of transfer, etc.) to the Medi-Cal Program Specialist. Upon receipt of these documents, the Medi-Cal Program Specialist will log in the referral and forward the documents to the

California Department of Health Services (CDHS) for review and possible referral to the federal government.

- E. When documents are sent to the Medi-Cal Program Specialist to forward to CDHS, the ET will **not** send a NOA for restricted services to the LTC individual. Instead, the application will be kept **pending** until CDHS has completed the review and determination. Once the review is completed, CDHS will inform the county whether the ineligibility period for LTC services as determined by the ET will be imposed, or a modification is required. Upon receipt of the CDHS determination, the ET shall:

- 1) Submit a 14-28 DSS to the MEDS operator for an on-line entry to establish/activate the applicant on MEDS. Restriction code "951" is entered in the sensitive services field by the MEDS operator.

Note: The restriction code must be in place prior to granting the case on CDS.

- 2) Grant the case based on the CDHS determination if otherwise eligible.
- 3) Add an "L" line entry which states "period of ineligibility ends date" and send the applicant NOA 826.
- 4) Submit another 14-28 DSS to the MEDS operator when the period of ineligibility has ended. The MEDS operator will enter "000" in the sensitive services field.
- 5) Remove the "L" line entry when the period of ineligibility has ended. A new NOA is not required because the 826 NOA informed the beneficiary when the period of ineligibility would end.

Retroactive restricted benefits can be established if the applicant was not known to MEDS for the retroactive months. If prior eligibility existed, retroactive benefits cannot be established. An overpayment referral must be made instead.

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If an individual is determined to have made a disqualifying transfer of property, CDHS will forward the case record documentation to the appropriate federal authority after the period for requesting an appeal of the restricted services eligibility has passed. If fair hearings or re-hearings are requested, CDHS will not forward the case until the results of the administrative appeals are known. If at the end of the administrative appeals process, the final order upholds the county's decision and retains imposition of restricted services eligibility, CDHS will forward the case to the federal authority at that point.

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TRANSFER OF PROPERTY (Prior to 1/1/90)

The following rules apply to property transferred before January 1, 1990, by a person who was a beneficiary prior to January 1, 1990.

A. Transfer Not Resulting in Ineligibility

Transfers of property that have occurred under any of the following conditions will not result in ineligibility:

- 1) Transfers of property occurring more than two years prior to the date of application or after 1-1-90 will not be evaluated, regardless of the circumstances surrounding the transfer. This applies even if there is substantial evidence that the transfer was made solely for the purpose of qualifying for Medi-Cal.

EXCEPTION: Property transferred by institutionalized individuals will be evaluated (see Article 9, Section 7, page 8); or

- 2) Transfer of property which was exempt at the time of the transfer. Property that is exempt as long as specific conditions are met loses its exempt status once the conditions are no longer met; or
- 3) Transfer of property when the net market value of the transferred property, when included in the property reserve, results in a total property reserve that equals or falls below the property limit. The net market value will be determined as of the time of the transfer. If eligibility exists, the value of the transferred property will no longer be considered; or
- 4) Transfer of property when adequate consideration was received. Adequate consideration means the receipt of cash or property which, at the time of transfer, was of equal value to that of the item which was transferred and was legal at the time and place the transfer occurred. Adequate consideration also includes:
 - a) Satisfying a legal debt;
 - b) Reimbursing someone, other than a responsible relative, for care or benefits provided as long as there was a prior written agreement or understanding specifying the type of care to be given, at what rate of pay, and that reimbursement would be made. The applicant/beneficiary must provide evidence to establish that the value of the care or benefits provided was equivalent to the value of the property transferred; or
- 5) Transfer of property when foreclosure or repossession of the property was imminent at the time of the transfer and there is no evidence of collusion; or
- 6) Transfer of property when the applicant/beneficiary received an enforceable life care contract which does not include complete medical care. In this case, each full item of need provided under the life care contract is considered income in-kind as detailed in MPG Article 10.

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- 7) Transfer of property made without receipt of adequate consideration, but the applicant/beneficiary provides convincing evidence to the worker that shows that the transfer was not done in order to become eligible or reduce the share of cost.
- 8) Transfer of property when there is written transmutation of a married couple's non-exempt community property into equal shares of separate property through an interspousal agreement.

While the transfer of property by an applicant or beneficiary from one form to another has no effect on eligibility, any property obtained by an applicant or beneficiary through such a transfer may have an effect on eligibility. Therefore, such transfers must be evaluated to determine if eligibility still exists after property has been transferred from one form to another.

B. Transfers Resulting in Ineligibility (Transfers prior to January 1, 1990)

The following transfers result in ineligibility:

- 1) Applicant/beneficiary received an enforceable life care contract which includes complete medical care; or
- 2) Adequate consideration was not received for the transfer of non-exempt property.
 - a) It is presumed that transfers of non-exempt property made without adequate consideration are made in order to establish Medi-Cal eligibility or reduce the share of cost.
 - b) The applicant/beneficiary may overcome this presumption by providing the following:
 - (1) Convincing evidence, including a written subjective statement, which shows the sole purpose of the transfer was for reasons other than to establish eligibility or reduce the share of cost. This may include, but is not limited to, evidence that the transfer was in order to avoid probate and/or the applicant had no knowledge of Medi-Cal or its benefits at the time of the transfer; and
 - (2) That adequate resources were available for support and medical care taking into account the applicant/beneficiary's health, life expectancy and ability to understand the extent of the resources at the time of the transfer.

C. Examples of Transfers (Prior to January 1, 1990)

- 1) Mrs. C applies for Medi-Cal in August 198X. In July, she gave her adult daughter \$3,000 to purchase a car as the daughter needed a reliable car in order to obtain her current employment. At the time of the transfer, Mrs. C knew she had minor surgery scheduled for August. Mrs. C has no other property or health insurance. Mrs. C states she was not aware of the Medi-Cal program in July. When she gave her daughter the money, it was her intention to pay for her surgery in monthly installments.

During her last visit to the doctor before the surgery, she learned that she was expected to pay in full and that monthly payments were not acceptable. The receptionist at the doctor's office recommended she apply for Medi-Cal.

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Mrs. C has provided convincing evidence that the money was not transferred to qualify for Medi-Cal and is determined eligible.

- 2) Mrs. D applies for Medi-Cal in July 198X. In June, she gave \$6,000 to her son as a wedding present. She has no health insurance, no other property and knew in June that she was soon to be hospitalized. She states that she was not aware of the Medi-Cal program in June. She stated she knew that persons without any way to pay for hospitalization were somehow able to get the care. The hospital told her to apply for Medi-Cal.

Mrs. D has provided subjective evidence that she was not aware of the Medi-Cal program when the property was transferred. However, Mrs. D has not presented convincing evidence to demonstrate that the transfer was made exclusively to honor her son's marriage and would be determined ineligible.

D. Documentation

1) Narrative

The worker must clearly document the decision regarding the eligibility of the transfer, including the reasons for the decision, in the narrative of the case file.

2) L-Line Entry

When a period of ineligibility occurs due to a transfer of property, the application is denied or Medi-Cal benefits are discontinued. The worker must make an L-line entry on the LMB to indicate the period of ineligibility.

Preapplication is required to review the L-line prior to scheduling an intake appointment. If the period of ineligibility has not ended, the preapplication worker will deny the application.

EXAMPLE: Per. of ineligibility Aug. 1988 - Aug. 2025

E. Period of Ineligibility (Transfer prior to January 1, 1990)

For transfers which result in ineligibility, a period of ineligibility must be determined.

1) Beginning Date

- a) The period of ineligibility begins with the first of the month following the date the transfer resulting in eligibility occurred, allowing for a 10-day notice if required.
- b) There may be consecutive periods of ineligibility from consecutive transfers of property without adequate consideration. If consecutive transfers occur, evaluate each separate month when a transfer occurred using the computation below.

2) Ending Date

The period of ineligibility ends when any of the following situations occur:

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- a) The property which was transferred and caused ineligibility is reconveyed to the applicant/beneficiary; or
- b) The applicant/beneficiary receives adequate consideration for the property; or
- c) The excess Net Market Value has been reduced to zero. (Months of ineligibility have been reduced to zero.)

3) Computation

The computation for the period of ineligibility is completed on the back of Form MC 176 P. The period of ineligibility is computed in the following manner.

- a) Determine the net market value of the property at the time of transfer less any consideration received. The result is the net value of the property transferred.
- b) Subtract the unused portion of the property reserve limit that was in effect at the time of the transfer.
- c) The result is the excess net value of the property transferred, and is used to determine the period of ineligibility.
- d) The number of months in the period of ineligibility will be determined by dividing the excess net value of the property transferred by the monthly maintenance need for the MFBU. The maintenance need used will be the maintenance need in effect during each individual month since the date of the transfer. Income received by the family after the transfer does not affect this computation.
- e) The period of ineligibility may be reduced by deducting verified actual costs of the following:
 - (1) Medical expenses,
 - (2) Out-of-home care costs in excess of the maintenance needs,
 - (3) Major home repairs necessary to put the home into a livable condition.

NOTE: In cases of consecutive transfers of property without adequate consideration, individual actual cost items may only be used one time to reduce property.

- 4) See Article 9, Section 7, page 8, for determining the period of ineligibility for institutionalized individuals who applied after 1-1-90.

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EXAMPLE:

[1]	Net Market Value	\$50,000
	<u>Less Consideration Received</u>	<u>-5,350</u>
	=Net Value of Property	44,650
[2]	Less the amount of the unused portion of the property reserve limit in effect at the time of <u>the transfer</u>	<u>-3,000</u> (Property Limit – 3)
	=Excess Net Value of Property	\$41,650
	EXCESS NET VALUE DIVIDED BY	41,650
	THE MONTHLY MAINTENANCE NEED	<u>850</u>
	EQUALS THE MONTHS OF INELIGIBILITY	= 49 months